

NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 4/09/2018 3:49:03 PM AEST and has been accepted for filing under the Court's Rules. Filing and hearing details follow and important additional information about these are set out below.

Filing and Hearing Details

Document Lodged:	Originating Application Starting a Representative Proceeding under Part IVA Federal Court of Australia Act 1976 - Form 19 - Rule 9.32
File Number:	VID1093/2018
File Title:	NOEL MURRAY UREN v RMBL INVESTMENTS LTD & ANOR
Registry:	VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing:	First Case Management Hearing
Time and date for hearing:	12/10/2018, 10:15 AM
Place:	Please check Daily Court List for details



Dated: 5/09/2018 3:37:20 PM AEST

A handwritten signature in blue ink that reads 'Warwick Soden'.

Registrar

Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The Reason for Listing shown above is descriptive and does not limit the issues that might be dealt with, or the orders that might be made, at the hearing.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



**Originating application starting a representative proceeding under
Part IVA of the Federal Court of Australia Act 1976**

VID of 2018

Federal Court of Australia
District Registry: Victoria
Division: General

NOEL MURRAY UREN

Applicant

RMBL INVESTMENTS LTD (ACN 004 493 789) and another named in the schedule
Respondents

To the Respondents

The Applicant applies for the relief set out in this application.

The Court will hear this application, or make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, then the Court may make orders in your absence.

You must file a notice of address for service (Form 10) in the Registry before attending Court or taking any other steps in the proceeding.

Time and date for hearing:

Place: Owen Dixon Commonwealth Law Courts Building, 305 William Street, Melbourne

Date: 4 September 2018

Signed by an officer acting with the authority
of the District Registrar

Filed on behalf of (name & role of party)	Noel Murray Uren (Applicant)
Prepared by (name of person/lawyer)	Steven Foale
Law firm (if applicable)	Maurice Blackburn
Tel (07) 3016 0300	Fax (07) 3236 1966
Email	SFoale@mauriceblackburn.com.au
Address for service (include state and postcode)	Level 8, 179 North Quay Brisbane Qld 4000



Details of claim

On the grounds stated in the accompanying Statement of Claim, the applicant claims, on his own behalf and on behalf of Group Members (as defined below) the following relief (capitalised terms have the same meaning as in the accompanying Statement of Claim):

1. A declaration pursuant to s 21, alternatively s 33ZF, of the *Federal Court of Australia Act 1976* (Cth) (**FCAA**) that, upon its true construction, the Collection Charge Clause referred to in paragraph 6 of the Statement of Claim only entitled the first respondent (**RMBL**) to demand from the Borrowers (being the applicant and second respondent), and only obliged the Borrowers to pay to RMBL:
 - a. the amount of costs, charges and expenses actually incurred by RMBL from time to time in connection with the collection of interest on all moneys and amounts payable pursuant to the Loan Agreement referred to in paragraph 5 of the Statement of Claim; or
 - b. *in the alternative*, a pro rata proportion of the aggregate amount of costs, charges and expenses actually incurred by RMBL from time to time in connection with the collection of interest on all moneys and amounts payable pursuant to the Loan Agreement and the loan agreements in existence at that time between RMBL and each Group Member.

2. *In the alternative*, a declaration pursuant to s 21, alternatively s 33ZF, of the FCAA that, to the extent that the Collection Charge Clause purported to confer on RMBL a discretion to increase or decrease the Collection Charge Rate referred to in paragraph 6 of the Statement of Claim, it:
 - a. was void for uncertainty; or
 - b. *in the alternative*, was subject to an implied term that if, at any time, RMBL chose to exercise its discretion to alter the Collection Charge Rate, the revised Collection Charge Rate would be fair and reasonable in that it would not exceed a rate that would enable RMBL to recover only:
 - i. the amount of costs, charges and expenses actually incurred by RMBL from time to time in connection with the collection of interest on all moneys and amounts payable pursuant to the Loan Agreement; or
 - ii. *in the alternative*, a pro rata proportion of the aggregate amount of costs, charges and expenses actually incurred by RMBL from time to time in connection with the collection of interest on all moneys and amounts payable pursuant to the Loan Agreement and the loan agreements in existence at that time between RMBL and each Group Member.



3. A declaration pursuant to s 21, alternatively s 33ZF, of the FCAA that the purported increases to the Collection Charge Rate on 16 March 2006, 16 July 2008, 16 December 2008 and 16 September 2010 were each void and of no effect.
4. A declaration pursuant to s 21, alternatively s 33ZF, of the FCAA that the Borrowers are entitled to recover from RMBL the amount by which the Collection Charges exceeded the amount (if any) referred to in sub-paragraph 1.a above or, *in the alternative*, sub-paragraph 1.b above.
5. Judgment in favour of the Borrowers, against RMBL, for the amount referred to in paragraph 4 above.
6. *In the alternative*, a declaration pursuant to s 21, alternatively s 33ZF, of the FCAA that in demanding and receiving the Excessive Amounts referred to in paragraph 27 of the Statement of Claim, purportedly pursuant to the Collection Charge Clause, RMBL contravened:
 - a. s 12DA and/or s 12CB of the *Australian Securities and Investments Commission Act 2001 (Cth) (ASIC Act)*; and/or
 - b. s 18 and/or s 21 of the *Australian Consumer Law (ACL)*.
7. An order that RMBL pay to the Borrowers statutory compensation pursuant to s 12GF of the ASIC Act and/or s 236 of the ACL in the amount of the Excessive Amounts.
8. Interest pursuant to s 51A of the FCAA.
9. Costs.
10. Such further or other relief as the Court determines is appropriate.

Questions common to claims of Group Members

The questions of law or fact common to the claims of the applicant and the Group Members are:

1. Whether, upon its true construction, the Collection Charge Clause (and each Group Member Collection Charge Clause) only entitled RMBL to demand from the Borrowers and each Group Member, and only obliged the Borrowers and each Group Member to pay to RMBL:
 - a. the amount of costs, charges and expenses actually incurred by RMBL from time to time in connection with (in the case of the Borrowers) the collection of interest on all moneys and amounts payable pursuant to the Loan Agreement and (in the case of each Group Member) the collection of interest on all moneys and amounts payable pursuant to their respective loan agreements; or
 - b. *in the alternative*, a pro rata proportion of the aggregate amount of costs, charges and expenses actually incurred by RMBL from time to time in connection with the



collection of interest on all moneys and amounts payable pursuant to the Loan Agreement and the loan agreements in existence at that time between RMBL and each Group Member.

2. Whether, to the extent that the Collection Charge Clause (and each Group Member Collection Charge Clause) purported to confer on RMBL a discretion to increase or decrease the Collection Charge Rate, it was void for uncertainty.
3. Whether, to the extent that the Collection Charge Clause (and each Group Member Collection Charge Clause) purported to confer on RMBL a discretion to increase or decrease the Collection Charge Rate, it was subject to an implied term of the kind referred to in sub-paragraph 24.a. of the Statement of Claim or, *in the alternative*, sub-paragraph 24.b. of the Statement of Claim.
4. If question 2 or 3 is determined in favour of the Borrowers and Group Members, whether the Increases in Collection Charge Rates were void and of no effect.
5. Whether, in demanding the Excessive Amounts from the Borrowers and Group Members, RMBL contravened ss 12DA and/or 12CB of the *Australian Securities and Investments Commission Act 2001* (Cth) and/or ss 18 and/or 21 of the Australian Consumer Law.

Representative action

The Applicant brings this application as a representative party under Part IVA of the *Federal Court of Australia Act 1976*.

The group members to whom this proceeding relates are all persons who:

- a) have at any time entered into a loan agreement with RMBL which contains or contained a clause in the same, or substantially the same, terms as cl 6.3 of the Loan Agreement between the Borrowers and RMBL;
- b) have paid to RMBL an amount or amounts by way of 'collection charge' pursuant to the clause referred to in sub-paragraph a); and
- c) have not, as at the date of the commencement of this proceeding, received from RMBL a full refund of the amount or amounts referred to in sub-paragraph b).

Applicant's address

The Applicant's address for service is:

Place: Maurice Blackburn, Level 8, 179 North Quay, Brisbane Qld 4000

Email: SFoale@mauriceblackburn.com.au



The Applicant's address is 1550 Buffalo-Waratah Road, Walkerville Vic 3956

Service on the Respondents

It is intended to serve this application on the Respondents.

Date: 4 September 2018



Signed by Steven Foale
Lawyer for the Applicant



Schedule

VID of 2018

Federal Court of Australia
District Registry: Victoria
Division: General

Respondents

Second Respondent: **BRUCE NORMAN UREN**

Date: 4 September 2018